

Notice of Allowability

Application No.

09/975,530

Examiner

Cheyne D. Ly

Applicant(s)

WILKES ET AL.

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to March 31, 2005.
2. ☒ The allowed claim(s) is/are 20, 21, 23-32, 67-71, 81, 83, and 89-94, renumbered as 1-25, respectively.
3. ☒ The drawings filed on 10 October 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date June 27, 2005.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on June 27, 2005, William D. Noonan requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 02-4550 the appropriate fee for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. The application has been amended as follows:

IN THE CLAIMS

3. In the claim 20, line 5, delete "thereof, comprising:", insert therefor – thereof, comprising:--.

4. In the claim 20, line 7, after "the first microorganism;", insert – wherein metabolically similar microorganisms are organisms that exhibit similar fingerprint spectra that change similarly in response to changes in the environment--.

5. In the claim 81, line 10, after "the first microorganism;", insert – wherein metabolically similar microorganisms are organisms that exhibit similar fingerprint spectra that change similarly in response to changes in the environment--.

6. In the claim 83, line 5, after "the first microorganism;", insert – wherein metabolically similar microorganisms are organisms that exhibit similar fingerprint spectra that change similarly in response to changes in the environment--.

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7. The following is an examiner's statement of reasons for allowance:

8. The instant claims are allowable because 20, 21, 23-32, 67-71, 81, and 89-94 recite the limitation of "deriving a relationship between the fingerprint spectrum of the second microorganism cultured under the first set of environmental factors and the fingerprint spectrum of the second microorganism cultured under the second set of environmental factors; and, applying the relationship derived for the second microorganism to transform the fingerprint spectrum of the first microorganism cultured under the first set of environmental factors to an expected fingerprint spectrum for the first microorganism under the second set of environmental factors that is compensated for drift due to the differences between the first and second sets of environmental factors that affect the metabolic state of the first microorganism" which is free of any prior art.

9. Further, claim 83 recites "deriving a relationship between the pyrolysis mass spectrum of the second microorganism cultured under the first set of environmental factors and the pyrolysis mass spectrum of the second microorganism cultured under the second set of environmental factors; and, applying the relationship derived for the second microorganism to transform the pyrolysis mass spectrum of the first microorganism cultured under the first set of environmental factors to an expected pyrolysis mass spectrum of the first microorganism cultured under the second set of environmental factors that is compensated for drift due to the differences between the first and second sets of environmental factors that affect the metabolic state of the first microorganism" which is free of any prior art.

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10. It is noted that claims 20, 21, 23-32, 67-71, 81, 83, and 89-94, have been renumbered as 1-25, respectively.

11. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

CONCLUSION

12. Claims 20, 21, 23-32, 67-71, 81, 83, and 89-94, renumbered as 1-25, respectively, have been allowed.

13. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547. The USPTO's official fax number is (571) 273-8300.

14. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete

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service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

15. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Dune Ly, whose telephone number is (571) 272-0716. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, Ph.D., can be reached on (571) 272-0718.

C. Dune Ly / *cdl*
7/10/05

~~ARDIN H. MARSCHEL~~
PATENT EXAMINER

Ardin H. Marschel 7/10/05
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER